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REAL SOLUTIONS

Municipal Caselaw Update

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Cases for Discussion

- *BONUS! – Fraser Twp v Haney – Mich S Ct - 2022*
- *Oshtemo Charter Township v Kalamazoo County*
- *Detroit Media Group LLC v Detroit Board of Zoning Appeals*
- *Sunrise Resort Assoc, Inc v Cheboygan County Road Comm'n*
- *Connell v Lima Township*
- *Attitude Wellness LLC, d/b/a Lume Cannabis Co v Village of Edwardsburg*
- *Rotta v City of Ludington et al.*



Township of Fraser v Haney

- Defendant Haney brought pigs onto his commercial property in 2006.
- The Township sought an injunction to prohibit the agricultural use in the commercial district in 2016.
- In a published decision, the Court of Appeals held the Township's enforcement action was time-barred under the statute of limitations.
- The Court of Appeals reasoned that the continued presence of the pigs was a "continuing wrong" but that legal doctrine had been abrogated.



Fraser Twp v Haney

- The Supreme Court reversed.
- The continuing wrongs doctrine was inapplicable.
- They held that the Township was seeking an injunction to prevent the current conditions on the property.
- As long as the pigs or hogs were on the property, they were creating nuisances that could be enjoined.
- It was those nuisances that the Township sought to abate, not the nuisance from 2006.

This is an important case reversing the Court of Appeals.

It maintains the status quo that every day a violation exists is a new violation.



Oshtemo Charter Township v Kalamazoo County

- In this case, the Charter Township of Oshtemo overturned a 1985 decision of the Attorney General that limited the millage amount available to Charter Townships for general operations.
- The Headlee Amendment of 1978 generally limits the amount of taxes governments can levy without voter approval.
- Case Background: In 1979, Oshtemo converted from a general law township (1 mill limit) to a charter township (5 mill limit). Oshtemo operated under the 1 mill limit until 2019, when it sought to levy an additional half mill.
- The County denied the request, relying on the Attorney General's opinion concluding charter townships incorporated *after* the Headlee Amendment was ratified remain limited to the millage rate for general law townships.





The Court of Appeals Held:

- Oshtemo's change to a charter township did not create a "new" tax but merely opened the door to a tax rate "previously authorized" and "now eligible to levy."
- All charter townships may levy up to five mills for operating purposes.
- With additional funding available, Charter status may be more attractive throughout the State

Detroit Media Group LLC v Detroit Board of Zoning Appeals

- In this case, the Court of Appeals considered whether a land use is considered abandoned from the perspective of a leaseholder or a property owner.
- Case Background: In 2004, successors to Detroit Media Group (“DMG”) obtained a variance for an illuminated changeable sign on an existing building mural. The sign was removed in 2012 to accommodate building renovations. Historic building preservation criteria prevented reinstall.
- In 2013, DMG advised the City that it had not abandoned its sign variance, renewed its lease, and again sought to utilize its sign after the historic building criteria were inapplicable.
- The City argued that DMG abandoned its sign variance by inactivity.
- The ZBA initially held that the variance was not abandoned but then reconsidered and ruled for the City that the sign had been abandoned.
- DMG appealed to Circuit Court which reversed the ZBA decision.



The Court of Appeals:

Affirmed the Circuit Court, looking to the City's ordinance for a definition of owner.

The City's ordinance provided that someone could be an owner by holding

- Legal title
- Another beneficial interest
- Contractual right to purchase

Since DMG was a beneficial owner for advertisement space and was issued the variance, it was an "owner" under the ordinance and had not abandoned the variance.

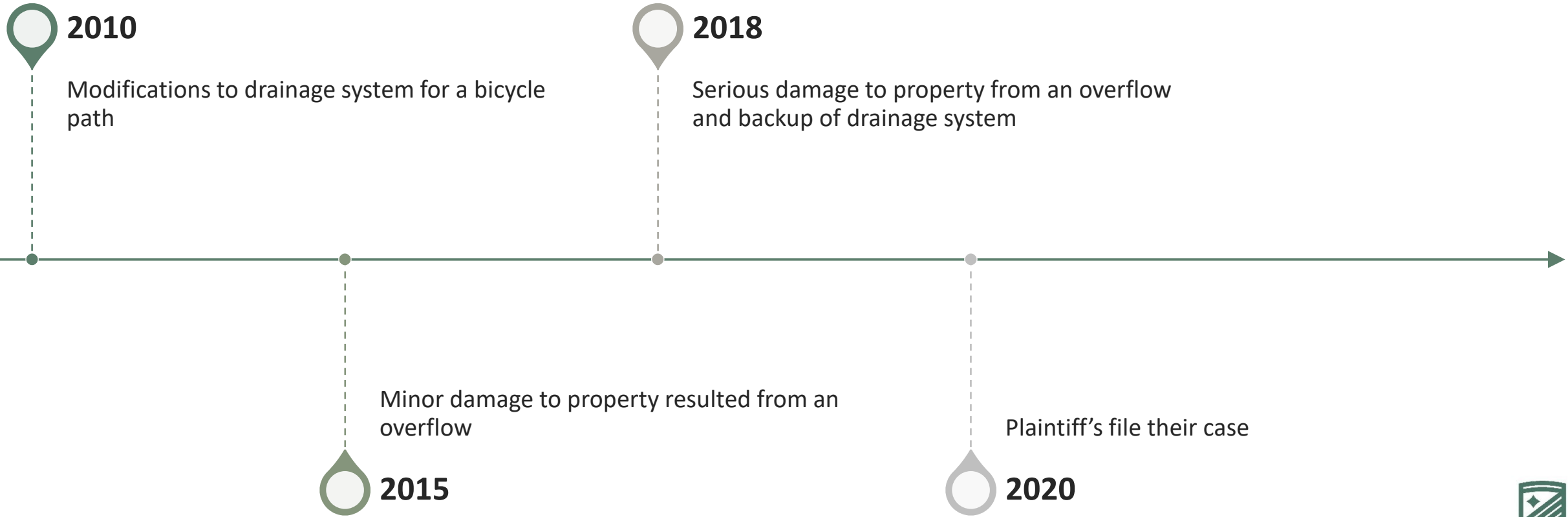




Sunrise Resort Assoc, Inc v Cheboygan County Road Comm'n

- In this case, the Court of Appeals considered for the first time when a claim accrues under the sewage-disposal-system-event exception to governmental immunity.
- Case Background: Plaintiffs alleged that they sustained property damages as a result of modifications to a storm water drainage system.





Timeline

- The Trial Court ruled the claim started with the event in 2015 and stopped the lawsuit under the statute of limitations.
- The Court of Appeals noted the statute of limitations starts when *the claim* accrues.
 - The Court of Appeals agreed that the plaintiffs' lawsuit was "premised on a specific, discrete backup event" in May 2018 and sought "damages that occurred only on that occasion." Whether there was also an "event" in 2015 was irrelevant to the Court since plaintiffs only sought damages from 2018.
 - The Court also held that governmental immunity did not stop plaintiffs from asking for an injunction to prevent future nuisance.

This case cautions municipalities with stormwater systems or wastewater sewerage systems that different dates of damage may result in different claims and that a potential plaintiff who previously knew of the system defect or potential for damage may not automatically stop a lawsuit.



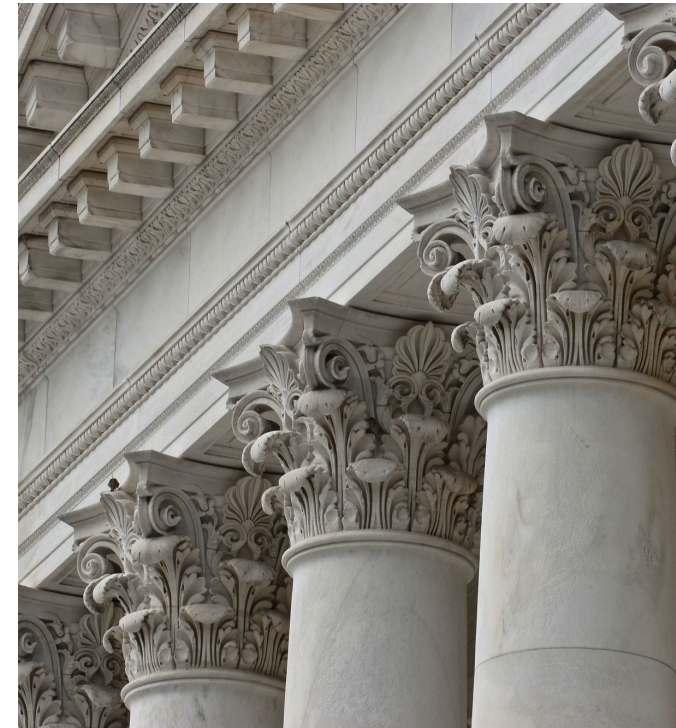


Connell v Lima Township

- In this case, neighbors challenged a conditional rezoning of land.
- In 2018, a property owner of an abandoned factory sought a conditional rezoning of the parcel to light industrial. Notice was mailed for the first planning commission meeting. The planning commission recommended the Township Board deny the conditional rezoning. The planning commission returned the rezoning application to the Planning Commission.
- The Commission recommended approval of the updated site plan and conditions but did not mail additional notice. The Township Board approved the rezoning with conditions.
- In response to requests, the Township verbally informed the plaintiffs their appeal could only be heard in Circuit Court, which plaintiffs then commenced.

Connell v Lima Township

- In Court, the Township argued that the property owners failed to exhaust their administrative remedies and should have filed an appeal to the ZBA. The trial court adopted the Township's arguments.
- The Court of Appeals held there was no administrative appeal available.
- The Court of Appeals reiterated that a rezoning decision is not an administrative decision but a legislative act.
- Although Townships have substantial policy discretion in their legislative decisions, they can be reviewed on appeal and a Township may need to defend the Board action properly with precision and clarity.



Attitude Wellness LLC, d/b/a Lume Cannabis Co v Village of Edwardsburg (unpublished)

- This case involves the review of applications for recreational marijuana permits and the available avenues of appeal
- Edwardsburg adopted an ordinance allowing two recreational marijuana businesses in the village. A three-person committee would evaluate any applications and make recommendations to the Village Council. Plaintiff applied for a local license but it was not granted; they filed suit in Circuit Court.
- One of the applicants that did receive a local permit, NOBO, argued that the trial court could not hear the case because the Village's licensing decision "was an administrative decision" which must be appealed.
- They argued there must be an appeal filed, not a "new" lawsuit. The defendants asserted the decision to issue a local license was "quasi-judicial." Relying on zoning cases to understand the appeal, the Court agreed that the Village's process was an administrative action and that it was quasi-judicial.





Attitude Wellness LLC, d/b/a Lume Cannabis Co v Village of Edwardsburg

- The Court of Appeals ruled it was not a quasi-judicial proceeding.
- These applications were not like land use and zoning cases, and the trial court could consider whether the local ordinance was valid.
- Not only should your township carefully consider its ordinance provisions, but you must also carefully consider when and how to file—or defend—decisions in Circuit Court.
- Certain ordinances may benefit from specific administrative appeal processes.

Rotta v City of Ludington et al.

- In this case, a city corrected an OMA violation to prevent a FOIA violation.
- Case Background: At their November 2019 meeting, the City entered closed session to discuss a settlement of litigation with the Plaintiff and ultimately unanimously approved settlement.
- The problem: only four of the seven council members were present, less than the two-thirds necessary to enter a closed session under the applicable sections 7 and 8 of the OMA.



Rotta v City of Ludington et al.

- At their December meeting—with six members present—the City again voted to enter closed session and again unanimously approved the settlement agreement.
- Plaintiff sued arguing that “a legitimate purpose existed for the first closed session but not a proper quorum, whereas a legitimate quorum existed for the second closed session, but not a proper purpose.”



Rotta v City of Ludington et al.

- The City admitted that the vote to enter closed session in November was improper since the required 2/3 vote was not present. Importantly, this was not intentional.
- The Court noted that a municipality may cure procedural defects by re-enactment of the decision, including a decision to enter closed session.
- The City properly reenacted its decisions, no violation of the OMA ultimately occurred, and also no violation of the FOIA occurred.
- This case highlights that although discovering errors and correcting them procedurally may be cumbersome, the re-enactment of decisions ultimately protects the public body and serves the public with transparency.





Questions?

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